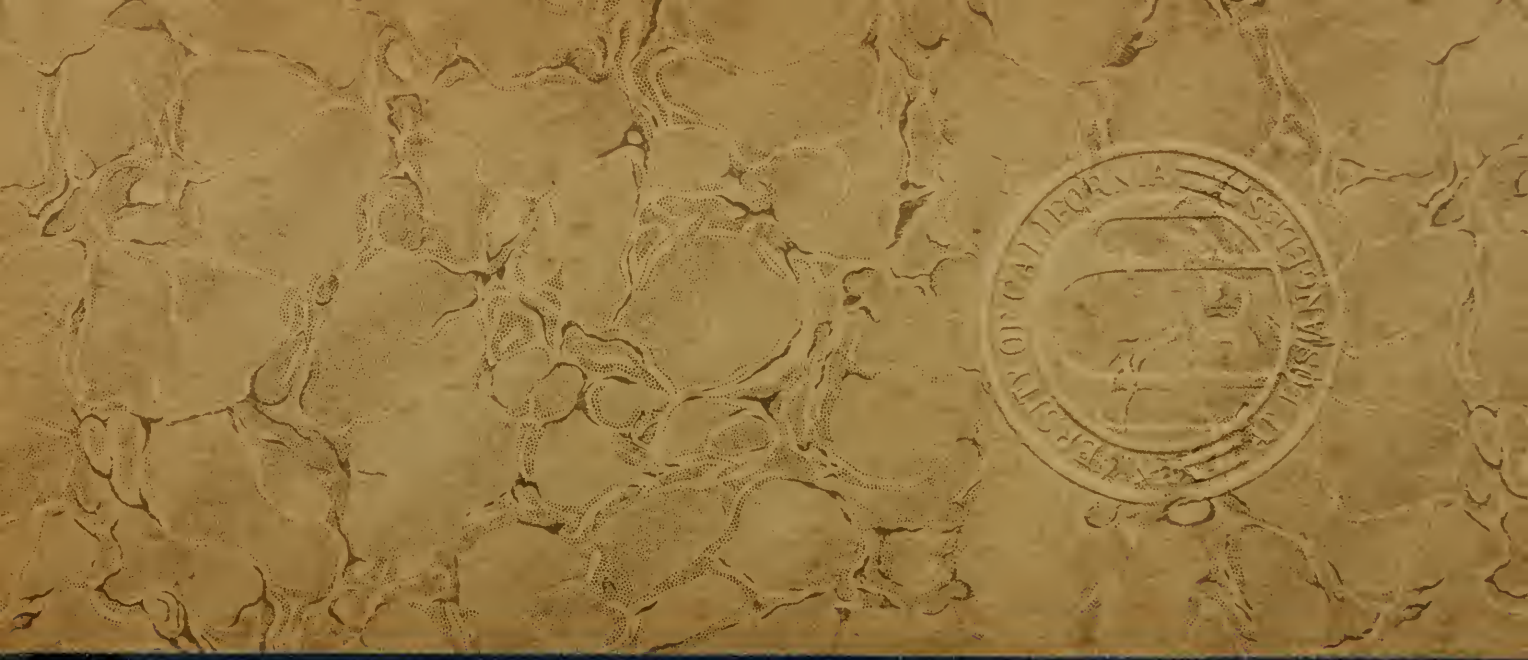

INCREASE OF RENT AND MORTGAGE INTEREST...ACTS 1915-19

INCREASE OF RENT AND MORTGAGE INTEREST (Restrictions) ACTS, 1915–1919.

FIFTH EDITION.

By THE EDITORS OF "LAW NOTES."

"LAW NOTES" PUBLISHING OFFICES,
25 & 26, CHANCERY LANE. W.C. 2.

3/6 NET

INCREASE OF RENT

AND

MORTGAGE INTEREST

(War Restrictions)

ACT, 1915,

AS AMENDED BY

THE COURTS (EMERGENCY POWERS) ACT, 1917,

THE INCREASE OF RENT, &c. (Amendment) ACT, 1918,

AND

THE INCREASE OF RENT, &c. (Restrictions) ACT, 1919.

BY

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1919.

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PREFACE

TO THE FIFTH EDITION.

We wrote in the Preface to the Fourth Edition that in view of the extensive and important alterations effected by the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, this little work had been largely rewritten, the Introduction recast, and the notes on the older Acts modified so as to incorporate the alterations introduced by the Act of 1919.

We stated that an attempt had been made in the notes to anticipate some of the more important difficulties which may be expected to arise in respect of the practical operation of this complicated and not infrequently obscure legislation.

We have now to add that an unexpectedly large demand has necessitated the printing of a fresh edition, and that advantage has been taken of this to incorporate therein the additional Rules of 1919. We have also noted the few decisions since the date of the last edition, and believe that all reported cases on the Acts to the end of May, 1919, have been embodied.

EDITORS OF "LAW NOTES."

June, 1919.

TABLE OF CASES.

INTRODUCTION.

History and Object of the Acts.

The effect of the war on the Housing Problem is unfortunately too well known to all to need explanation. Already in 1915 the stoppage of building and the access of population to munition and other areas had given rise to a process of rent-raising. The Act of 1915 was passed, checking this process as regards the smaller class of property; and since the landlord's apology for rent-raising was usually that he had been required to pay a higher rate of interest by his mortgagee, the Act also imposed a check on the increase of mortgage interest. Amendments on minor points of the Act of 1915 were made by the Courts (Emergency Powers) Act, 1917, and the Increase of Rent and Mortgage Interest, &c. (Amendment) Act, 1918.

In March, 1919, the position was this. Peace might be expected to "break out" at any time, and six months after that the Act of 1915 was timed to expire. It was recognised that at the end of this six months time would not be ripe for such expiry, and further, the mischief dealt with by the 1915 Act in respect of the smaller class of house was now making itself felt as to houses of more considerable size. Consequently there was passed the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, which (1) prolongs the operation of the 1915 Act, with, how-

ever, certain alterations as from its original date of expiry; (2) brings a further class of house within the Act, making certain modifications of the Act as to this latter kind of house.

General Principle and Effect of the Acts.

The general policy of the Acts is:—*As to the* 1915 *Act houses*, landlords must be content with the rent they were getting and mortgagees with the interest they were receiving immediately before the war. Six months, however, after "Peace" as established by Order in Council (see *post*, p. 39), they are free to demand 10 per cent. more rent and $\frac{1}{2}$ per cent. more interest (provided that as so increased the interest still does not exceed 5 per cent.).

As to the 1919 *Act houses*, landlords and mortgagees must content themselves with the rent or interest they were getting at Christmas, 1918, plus 10 per cent. on the standard rent (as to rent) or $\frac{1}{2}$ per cent. on the standard rate as to interest. It is to be noted that as to this class of house the increased percentage is not dependent on the lapse of six months from "Peace," and (as to mortgage interest) is not subject to any 5 per cent. limit. If, however, an increase took place after August 3rd, 1914, and before December 26th, 1918, the position is rather more complicated (see *post*, p. 44).

Before dealing with the Acts more in detail, there is one thing desirable to make clear at the outset. To talk of the landlord "raising the rent" (or the mortgagee "raising the interest") is to

employ a convenient phrase. But it is a phrase that may mislead unless it is carefully understood that while the Acts restrict the possibility of an increase in rent or interest, they give the landlord (or mortgagee) no power of increase he does not possess apart from the Acts. Apart altogether from the Acts a landlord cannot increase the rent by simply giving notice to the tenant that the rent is increased. The tenant will not be liable unless he agrees to pay a higher rent (in virtue of the Acts not always even then), though in some cases it may be possible to infer such an agreement if after notice the tenant stays on and pays the higher rent without demur. But if the tenant has not assented to the increase, the landlord's notice that the rent is raised is not legally effective. All that the landlord can do (and the Acts will in many cases now prevent even this) is to bring pressure to bear on the tenant by giving him proper notice to quit.

Similarly the mortgagee, quite apart from the Acts, cannot raise the mortgage rate of interest without the consent of the mortgagor. All he can do (and again the Acts restrict his powers as to even this) is to bring pressure to bear by calling in his mortgage. It is very important in construing the Act to have in mind throughout this fundamental legal position, and to remember that in no case can the landlord raise the rent, or the mortgagee the interest, simply by his own action.

Scope of the Acts.

The Acts extend to England, Scotland, and Ireland, and apply to the houses specified in sect. 2, sub-sect. 2

of the principal Act (*post*, p. 25), and sect. 4 of the Act of 1919 (*post*, p. 42), which houses we shall, for the sake of convenience, refer to as "small dwelling-houses." It will, however, be noticed that what we propose to term "small dwelling-houses" may consist, *e.g.*, of a single room if let separately or of a flat, while on the other hand, since the 1919 Act, it may be a house of considerable size. And since in some respects there is a difference in the position of houses included originally by the principal Act and houses for the first time brought within the scope of the Acts by the Act of 1919, we shall distinguish these different classes of houses by the terms "1915 Act house" and "1919 Act house."

Rent and Protection of Tenants.

"1915 *Act small dwelling-houses.*"—A standard rent is taken, *i.e.*, the rent on August 3rd, 1914, or if the property was not then let the last rent it was let at before. As to new houses never let till after August 3rd, 1914, the standard rent is the rent it is first let at. Where the rent is "progressive" the maximum rent is the standard rent (sect. 7, Act of 1919). Till six months after peace the landlord cannot (apart from a few exceptions) raise the rent above the standard rate, any agreement by the tenant since the war to pay a higher rate being ineffectual as from 25th November, 1915. This will be so even though there has been a change of tenants—the landlord cannot increase the rent even on letting to a new tenant.

Six months after "Peace" these restrictions still

continue till Lady Day, 1921, except that from the end of the six months it will be possible (sect. 2, Act of 1919), subject to certain conditions as to notice, to increase the rent by 10 per cent. of the standard rent.

"1919 *Act small dwelling-houses.*"—With regard to these where rent is increased after 25th December, 1918, the increase is ineffectual as from 4th March, 1919, if and so far as it exceeds 10 per cent. on the standard rent, but within this limit rent is increaseable even before the expiration of six months from "Peace." Any increase (whatever the amount) made before 26th December, 1918, is valid.

As to this class of house, if the rateable value at August 3rd, 1914, exceeds the rent at that date, the rateable value and not the rent will give the figure of the standard rent (sect. 4, sub-sect. 1 (v), Act of 1919).

As to both "1915 *and* 1919 *Act small dwelling-houses.*"—As to both classes of house rent is increaseable in certain cases:—

(1) Under sect. 1, sub-sect. 1 (ii) of the principal Act (6 per cent. on the cost of post-war improvements by the landlord).

(2) Under sect. 1, sub-sect. 1 (iv) of the principal Act (amount of increased rates).

(3) Where the rent at August 3rd, 1914, was less than two-thirds of the rateable value (*i.e.*, the Act does not apply to ground rents (sect. 2, sub-sect. 6 of the principal Act)).

(4) Where the rent is "progressive" (sect. 7 of the 1919 Act).

Certain methods of evasion are foreseen and guarded against. Thus, if the landlord flings any

burden previously borne by himself on the tenant, *e.g.*, if the landlord without raising the amount of the rent requires the tenant to do repairs formerly done by the landlord, this counts as an increase of rent (principal Act, sect. 1, sub-sect. 1 (iii.)). Nor can the landlord refuse to let or refuse to continue a tenancy unless he is paid something cash down—the tenant will be able to get back anything paid in this way after the 25th November, 1915 (or after March 4th as to "1919 Act houses"), by suing for it or deducting from his rent (principal Act. sect. 1, sub-sect. 2); but this does not prevent a lessor from taking a fine or premium on granting a lease for twenty-one years or more (Courts (Emergency Powers) Act, 1917, s. 4). Nor can the landlord bring pressure to bear by threatening to give notice to quit, for, apart from exceptional cases, he will not be able to turn the tenant out as long as he pays the rent as fixed by the Act (sect. 1, sub-sect. 3). A tenant can demand from the landlord a statement as to the standard rent, and failure to furnish the statement is a summary offence (Act of 1919, sect. 5, sub-sect. 1).

Rights of the Tenant as against a Purchaser of a House.

One of the exceptional cases in which a landlord can obtain an ejectment order, in spite of the fact that the tenant pays the standard rent and performs the other conditions of his tenancy, is that the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him. This exception was inserted in the Act mainly with

the idea of enabling a landlord of an agricultural estate to cultivate it properly. To do so it is often necessary for him to obtain possession of certain cottages to house his labourers. But the exception was taken advantage of by landlords of an entirely different character. Tenants were threatened with eviction by landlords who had bought the house over their heads for the purpose of occupying it themselves. In consequence the amending Act of 1918 was passed, whereby any person who bought the house since the 30th September, 1917, was put in an inferior position to the vendor as to getting an ejectment order with a view to occupation by himself. The Act of 1918 was further amended by sect. 5, sub-sect. 2, of the Act of 1919. The result of this combined legislation is that a purchaser of a small dwelling-house, if he bought the house after the 30th September, 1917, cannot eject the tenant so long as he pays the standard rent and performs the other conditions of the tenancy, except on the grounds of waste, or nuisance, or annoyance to neighbours, or some other ground which appears satisfactory to the Court, or where the Court is satisfied by a certificate of the Board of Agriculture and Fisheries that the premises are required for the occupation of a person engaged or employed in agricultural work of urgent national importance, or where the purchaser wants the house for occupation by himself or his employee or his tenant's employee, and the Court, after considering all the circumstances, including especially alternative accommodation available for the tenant, thinks it reasonable to make the order (*post*, pp. 18, 36, 37, 38 and 46).

Furnished Dwelling-houses.

The general provisions of the Acts have no application to the letting of furnished dwelling-houses. Thus, the restrictions on the landlord's power of ejectment have no application, so that no additional security of tenure is given the tenant of a furnished house, nor does the Act affect a mortgage of such a house. But sect. 6 of the 1919 Act makes certain provisions as to the rents in respect of furnished dwelling-houses, providing that, while the tenancy continues, rent showing more than 25 per cent. increase (not on the rent, but) on the "profits" as compared with the "normal profit" from a similar letting in the year ending 3rd August, 1914, may be declared irrecoverable by the County Court. This however is only so where the rent or rateable value of the house would bring it within the Acts if unfurnished.

The Acts have no application of any sort to lodgers.

Mortgages.

The Acts apply to mortgages of "small dwelling-houses," whether the mortgaged property is wholly or merely partly of that character (sect. 2, sub-sect. 2), except:—

(1) Mortgages where other property is also included, if the rateable value of the small dwelling-house is less than one-tenth the rateable value of the whole of the mortgaged premises (sect. 2, sub-sect. 4).

(2) Equitable charges by deposit of title-deeds or otherwise.

(3) Mortgages of ground rents (sect. 2, sub-sect. 6.)

As to 1915 *Act houses.*—The Act fixes a standard rate of interest, viz., the rate payable on August 3rd, 1914. or if the mortgage was created since that date the original rate of interest (sect. 2, sub-sect. 1 (b)), the mortgagee being prevented as from November 25th, 1915, from raising the rate of interest above the standard rate, and any agreement by the mortgagor to pay the higher rate being unenforceable (sect. 1, sub-sect. 1). But as from six months after "Peace" (*post*, p. 39), the interest can be increased (1) provided the increase is not more than half per cent. on the standard rate, and (2) the rate as increased does not exceed five per cent.

As to 1919 *Act houses.*—Where the rate of interest is increased at any time after December 25th, 1918, the increase is ineffective as from March 4th, 1919, so far as it exceeds half per cent. on the standard rate. There is, however, no maximum of five per cent. as to this class of house, and the increase is good though it take place before six months after "Peace."

As to both 1915 *and* 1919 *Act houses.*—A mortgagee of "small dwelling-houses" may not, unless the mortgagor consents, during the continuance of the Act call in his mortgage or foreclose or sell or take other steps to enforce his security or to recover the principal, unless the interest is twenty-one days in arrear or the mortgagor is breaking his covenants or letting the property get into disrepair or not making payments falling due under prior incumbrances (sect. 1, sub-sect. 4).

But this provision does not apply to mortgages

repayable by instalments spread over not less than ten years. Nor does it prevent a mortgagee from exercising his power of sale when he was in possession on the 25th November, 1915, or (as to 1919 Act houses) 4th March, 1919, or where he does so with the mortgagor's consent, or where the mortgaged property is leasehold and the mortgagee satisfies the County Court that the security is seriously diminishing in value or otherwise in jeopardy and that it is reasonable to call it in.

And the provision of course does not apply to mortgages outside the Act, *e.g.*, equitable charges by deposit or mortgages of ground rents (sect. 2, sub-sects. 4 and 6). It must be remembered, however, that the Courts (Emergency Powers) Act, 1914, applies to all mortgages created before the 4th August, 1914, and, where the mortgagor is an officer or man in His Majesty's Forces, to mortgages created after that date but before the 11th April, 1916 (Courts (Emergency Powers) (Amendment) Act, 1916, s. 1), or before the mortgagor joined His Majesty's Forces, *i.e.*, actually joined up (Courts (Emergency Powers) Act, 1917, s. 8; *Re A Debtor*, 35 T. L. R. 58)), and makes previous application to the Court necessary before the mortgagee exercises many of his remedies.

INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915.

5 & 6 GEO. 5, c. 97.

An Act to restrict, in connection with the present War, the Increase of the Rent of Small Dwelling-houses and the Increase of the Rate of Interest on, and the Calling in of, Securities on such Dwelling-houses.

[23rd December 1915.]

This Act is to be construed as one with the amending Acts of 1918 and 1919. For the meaning of the expressions "small dwelling-house," "1915 Act houses," "1919 Act houses," and "termination of the war," used in the notes, see pp. 4 and 39. As to the general interpretation of the Acts, see pp. 2 and 3.

1. *Restriction on raising rent or rate of mortgage interest.*—(1) Where the rent of a dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the commencement of the present war, or is hereafter during the continuance of this Act, increased above the standard rent or the standard rate of interest as herein-after defined, the amount by which the rent or interest payable exceeds the amount which would have been payable had the increase not been made shall, notwithstanding any agreement to the contrary, be irrecoverable:

As explained above (*ante*, p. 3), the rent or interest can, strictly speaking, only be increased by agreement. It must be

noticed that this clause only applies to "1915 Act houses," though the rest of the section applies equally to "1919 Act houses." In its application to 1919 Act houses this section is to be read with the clause given in sect. 4 of the Act of 1919 substituted for the above clause. The clause in this section (as to "1915 Act houses") avoids an agreement as to increased rent or interest accruing due on or after November 25th, 1915, subject to sects. 1, 2 and 3 of the Act of 1919.

Illustrations.—(a) On November 1st, 1917, the landlord gave notice to the tenant of a "1915 Act house" that the rent was raised. The tenant refused to assent. The tenant never became liable for the increase. If the landlord distrains for the increase he is liable in damages for an illegal distress.

(b) In the last case, six months after "termination of the war," the tenant agrees to an increase of 10 per cent. on the rent. This agreement is binding in virtue of and subject to the conditions imposed by sect. 2 of the Act of 1919.

Mutatis mutandis the above examples are true of an agreement by a mortgagor to pay increased interest, and as to (b) the limit of increase being $\frac{1}{2}$ per cent. with a maximum of 5 per cent. (sect. 3, Act of 1919).

The clause applies to new tenants as to old; the landlord cannot raise the rent even on re-letting. The standard rent is fixed for the house, not the particular tenant (*King* v. *York*, (1919) W. N. 59).

As to "dwelling-house" see *post*, p. 25, and as to "standard rent" and "standard rate of interest," *post*, p. 23. As to the right of a tenant or mortgagor to recover overpaid rent or interest, see sect. 5 of the Courts (Emergency Powers) Act, 1917, *post*, p. 33.

Provided that—

(i) This subsection shall not apply to any rent or mortgage interest which accrued due before the twenty-fifth day of November nineteen hundred and fifteen; and

This applies to both "1915 and 1919 Act houses," with the substituted date of 4th March, 1919, as to 1919 Act houses (sect. 4 (ii), Act of 1919).

(ii) Where the landlord has since the commencement of the present war incurred, or during the continuance of this Act incurs,

expenditure on the improvement or structural alteration of a dwelling-house (not including expenditure on decoration or repairs), an increase of rent at a rate not exceeding six per cent. per annum on the amount so expended shall not be deemed to be an increase for the purposes of this Act; and

It will be observed that no increase is possible in respect of ordinary repairs. For the notice which must be given before any increase, see proviso (vi) to this sub-sect., *infra*, p. 16.

The question has been raised, but, so far as we know, not decided, whether street improvements would come within this clause. If the owner of a "small dwelling-house" receives a notice requiring him to pave and channel the street fronting, and, on his failing to do the work, the local authority carries it through and apportions the expense on the frontagers in the usual way, has he incurred expenditure on the improvement of the dwelling-house? It is a point on which opinions may well differ, but we incline to the view that this is not an improvement within the clause.

So, too, putting the drains in order or putting in new cisterns for old or new waterclosets for old would not appear to be a ground for increasing the rent, but probably come under the head of "repairs."

(iii) Any transfer to a tenant of any burden or liability previously borne by the landlord shall for the purposes of this Act be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer,

the terms on which a dwelling-house is held are on the whole more favourable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this Act, and if any question arises under this proviso the question shall be determined by the county court, whose decision shall be final and conclusive; and

Illustration.—The landlord of a small dwelling-house in London let it at 34*l.* per annum, undertaking to do repairs, afterwards making a fresh agreement with the tenant whereby the rent remains the same, but the tenant undertook repairs. In the view of the county court the repairs are equivalent to 2*l.* per annum. The rent is deemed to be increased by that amount. *Semble* the tenant will be bound by his undertaking to repair, but is only liable for 32*l.* by way of rent.

The words "final and conclusive" take away any right of appeal. (*Lyon* v. *Morris*, 19 Q. B. D. 139.)

The application is made to the County Court of the district in which the dwelling-house is situate (Rule 1) by summons in Form I. (Rule 4).

(iv) Where the landlord pays the rates chargeable on, or which but for the enactments relating to compounding would be chargeable on, the occupier of any dwelling-house, an increase of the rent of the dwelling-house shall not be deemed to be an increase for the purposes of this Act if the amount of the increase does not exceed any increase in the amount for the time being payable by the landlord in respect of such rates over the corresponding amount paid in respect of the yearly, half yearly or other period which included the third day of August nineteen hundred and fourteen, and for the purposes of this proviso the expression "rates" includes water rents and charges; and

Any actual increase in the rates can be added to the rent not merely where such increase in the rates is caused by an increase in the rate itself, but also where it is caused by an increase in the rateable value of the premises. Thus, in *Steel* v. *Mahoney*, (1918) W. N. 253; 34 T. L. R. 327, the pre-war rent was 9*s*. a week. In September, 1915, the landlord raised the rent to 10*s*. a week. There was a revision of the assessment, and the rates were increased by 4*d*. a week above the pre-war rate. It was held by a Divisional Court that the landlord might recover 9*s*. 4*d*. a week.

As to the amount of the increase which can be made under this sub-section, reference may usefully be made to *W. H. Sutton & Sons* v. *Hollerton*, (1918) W. N. 237. There, the house was in Manchester, where rates are payable for the yearly period June 25 to June 24. The pre-war rent was 8*s*. 9*d*. a week. On January 5, 1918, the landlord served a notice informing the tenant that his rent would be 9*s*. 9*d*. as from February 2, 1918, owing to an increase in rates. From the particulars served with the notice, it appeared that for the year 1915—1916 the rates showed an increase of 12*s*. 2*d*. over 1914—1915; for the year 1916—1917 the increase was 2*s*. 9*d*., and for 1917—1918 6*s*. 9*d*. The landlord added together the total increase for the three years, making 1*l*. 1*s*. 8*d*., and divided that amount by 21 (the number of weeks from February 2, 1918, to June 29, 1918), which brought out the sum of 1*s*., which he sought to add to the weekly rent. It was held by the Court of Appeal that this was wrong, for the Act only allows an increase in the rent to be made in respect of the increase in the rates on the current rating period. In this case the current rating period was the year ending June 24, 1918, the increase in the rates was 6*s*. 9*d*., and that must be divided by the number of weeks in the period, viz. 52. The result was the landlord could only increase the rent by about 2*d*. a week.

For the notice which must first be given, see proviso (vi) to the sub-sect., *infra*, p. 16.

(v) Where the rate of mortgage interest has been increased in compliance with, or in consequence of, a notice in writing demanding either repayment of the mortgage or an increased rate of interest given prior to the fourth day of August nineteen hundred and fourteen, such increase shall not be

deemed to be an increase for the purposes of this Act; and

It will be observed that provided the notice was given before August 4th, 1914, it is immaterial that the mortgagor's assent to the increase was given after that date. And further, that if a mortgagor has, in consequence of such notice, agreed to an increased rate per cent., though he remains liable to pay the increased rate of interest, the Acts nevertheless still restrict increase of rent.

(vi) Wherever an increase of rent is by this Act permitted, no such increase shall be due or recoverable until [or in respect of any period prior to] the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, accompanied—

(a) where the increase of rent is on account of such expenditure as is mentioned in proviso (ii) to this subsection, by a statement of the improvements or alterations effected and of their cost; and

The words bracketed, "or in respect of any period prior to," were not in the Act originally, but were inserted by sect. 5, sub-s. 3 of the 1919 Act to meet the possibility suggested by *Steel* v. *Mahoney*, (1918) W. N. 253; 34 T. L. R. 327, which is said to have decided that the clause as it originally stood did not prevent the landlord from claiming the increase as from the date of the notice: it only suspended the remedy and prevented his suing till four weeks had expired. The facts were rather special, and it may be doubted whether the case went as far as was supposed. At any rate, the amending words introduced by the Act of 1919 make the position clear for the future. The lessor is not only debarred from suing during the four weeks, but even when the four weeks are up cannot claim arrears of increase, so to speak, in respect of the four weeks. The increase cannot for any purpose be treated as starting till the four weeks are up.

It was held under the principal Act that the notice must be given even if the expenditure was incurred and the rent increased before the introduction of the Act (*Wortley* v. *Mann*,

(1916) W. N. 390). The same principle appears to be applicable to 1919 Act houses.

> (b) where the increase of rent is on account of an increase in rates, by a statement showing particulars of the increased amount charged in respect of rates on the dwelling-house; and

It was held under the principal Act that the notice must be given even if the rent was increased before the introduction of that Act, and if it has not been given the tenant can recover, or deduct from rent in accordance with sect. 5 of the Courts (Emergency Powers) Act, 1917, any increase paid within the preceding six months (*Bridges* v. *Chambers*, (1919) W. N. 390). This principle seems equally applicable to 1919 Act houses.

Formal defects in the notice by which the tenant is not in any way damnified are not fatal (*Steel* v. *Mahoney* (1918), 34 T. L. R. 328). Thus, if the notice states the intention of increasing the rent by 8*d.* a week, whereas the landlord is only entitled to increase it by 4*d.*, but the actual demand made is for 4*d.* only, the 4*d.* is recoverable (*Steel* v. *Mahoney* (1918), 34 T. L. R. 327).

> (c) where such a notice has been served on any tenant the increase may be continued without service of any fresh notice on any subsequent tenant.

(2) A person shall not in consideration of the grant, renewal, or continuance of a tenancy of any dwelling-house to which this Act applies require the payment of any fine, premium, or other like sum in addition to the rent, and where any such payment has been made in respect of any such dwelling-house after the twenty-fifth day of November nineteen hundred and fifteen, then the amount shall be recoverable by the tenant by whom it was made from the landlord, and may without prejudice to any other method of recovery be deducted from any rent payable by him to the landlord, but this provision shall not apply to any payment

under an agreement entered into before the fourth day of August nineteen hundred and fourteen.

In the application of this section to 1919 Act houses, 4th March, 1919, is substituted for 25th November, 1915 (sect. 4, Act of 1919).

This section is aimed at the institution of "key money." Where accommodation is scarce the landlord, out of a number of prospective tenants all willing to pay a like rent, selects the one who will pay the largest sum by way of bonus on taking possession. In cases where the Act applies an agreement to make such a payment is not enforceable, and any such payment made can be recovered either by suing the landlord or by deduction from rent.

The section, however, was found in practice to interfere with the *bonâ fide* granting of leases at a premium. In *Rees* v. *Marquis of Bute*, (1916) 2 Ch. 64, for instance, a scheme, genuinely designed and adapted for the improvement of the position of the Marquis' tenants, under which they were to receive long leases at a reduced rent in consideration of a money payment, fell through owing to the impossibility of compelling payment of the premium. This defect was partially remedied by sect. 2 of the Courts (Emergency Powers) (No. 2) Act, 1916, which allowed the County Court to authorise the taking of a premium or fine on the granting of a lease for 21 years or more, and now, by sect. 4 of the Courts (Emergency Powers) Act, 1917, *post*, p. 33, leases for 21 years or upwards are taken out of this section altogether, and the provision of the Act of 1916 repealed, so that the leave of the County Court is no longer required.

(3) No order for the recovery of possession of a dwelling-house to which this Act applies or for the ejectment of a tenant therefrom shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this Act and performs the other conditions of the tenancy, except on the ground that the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, or that the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, or on some other ground which may be deemed satisfac-

tory by the court making such order, and where such order has been made but not executed before the passing of this Act the court by which the order was made may, if it is of opinion that the order would not have been made if this Act had been in operation at the date of the making of the order, rescind or vary the order in such manner as the court may think fit for the purpose of giving effect to this Act.

In the application of this sub-section to 1919 Act houses a reference to the date of the passing of the 1919 Act (viz., 2nd April, 1919) is substituted for "the passing of this Act."

Under this sub-section the tenant of a dwelling-house to which the Act, as extended by the Act of 1919, applies, cannot be turned out so long as he complies with the conditions stated, except on one of the grounds mentioned in the sub-section. In *Epsom Grand Stand Association, Limited* v. *Clarke*, 35 T. L. R. 525, it was questioned but not decided whether in an action for ejectment the sub-section is a bar to judgment or only to execution.

It has been questioned whether the section protects a lessee for a fixed term from having to give up possession at the expiration of his lease, since after determination of his lease he is no longer "a tenant." But even if the house is not "let" it was let, and will still be within the Act in virtue of sect. 2, sub-sect. 5 of the principal Act. Moreover, a tenant who holds over is not a trespasser: he is a tenant at sufferance. The sub-section appears to protect him just as much as it protects a weekly tenant who receives notice to quit and refuses to give up possession, and this view, advanced by us in previous editions, has been adopted by Mr. Justice Greer in *Vernon Investment Association* v. *Welch* (1919), 35 T. L. R. 511.

The Act, it will be noticed, does not prevent the landlord from giving notice to quit; it merely provides that no order for recovery of possession or for ejectment is to be made, and prevents double value from being recovered under the Landlord and Tenant Act, 1730, for the tenant holding over (*Crook* v. *Whitbread*, 147 L. T. 80. A landlord, therefore, who wishes to obtain possession as soon as possible after the expiration of the Act, can give notice to quit now without waiting for the expiration of the Act. This is a small point in the case of weekly tenancies, which can be terminated by a week's notice, but of considerable importance as regards tenancies from year to year, which can only be terminated by half a year's notice expiring at the end of one of the years of the tenancy.

Where such notice to quit is given, it is not clear what the effect of subsequent acceptance of rent would be. Usually the acceptance of rent would operate as a waiver of the notice, but we doubt whether it could be so construed where the landlord has by statute to let the tenant stop on whether he wishes to do so or not. If it could be construed as a waiver, the only way out of the difficulty would be for the landlord to refuse the rent and claim it afterwards as mesne profits—which is not a reasonable alternative.

If it is intended to apply to the Court for possession, it is advisable that the notice to quit should specify the ground on which possession is required.

This section protects the tenant even though he himself gave notice to quit, and even if he changes his mind and holds over he will not be liable for double rent under the Distress for Rent Act, 1737 (*Flannagan* v. *Shaw*, (1919) W. N. 139; *Artizans, Labourers and General Dwellings Co., Limited* v. *Whitaker*, (1919) W. N. 165).

"Person in his employ."—These words mean a person already in the employ of the person applying for the ejectment. It is not sufficient ground for making an ejectment order that the landlord wants the dwelling-house for a foreman whom he is about to employ (*Rex* v. *Rogers, Ex parte Hodson*, (1918) W. N. 128).

As to mode of application for rescission or variation of orders made but not executed before the Act, see Rule 20, *post*, p. 58.

In deciding whether there is a satisfactory ground for making an order for possession the Court must consider the circumstances existing when the order is asked for, not those existing when notice to quit was given (*Harcourt* v. *Lowe*, 35 T. L. R. 255).

The power of the Court to make an ejectment order on the ground that the premises are reasonably required by the landlord for the occupation of himself or of some other person in his employ or in the employ of some tenant from him has now been restricted by sect. 1 of the Act of 1918, as further amended by the Act of 1919, s. 5, sub-s. 2 (see below, pp. 36, 46).

That the landlord has given notice for the purpose of selling with vacant possession cannot of itself, since the Act of 1918, be a satisfactory ground for making the order (*Stovin* v. *Fairbrass*, (1919) W. N. 68). See also *Vernon Investment Association* v. *Welch*, 35 T. L. R. 511.

(4) It shall not be lawful for any mortgagee under a mortgage to which this Act applies, during the continuance of this Act, and so long as interest at the

standard rate is paid and is not more than twenty-one days in arrear, and the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed, and so long as the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance, to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured:

The words "standard rate" must be read subject to sect. 3 of the Act of 1919.

In its application to mortgages of 1919 Act houses this sub-section must be read as modified by sect. 4 (iv) of the Act of 1919 (*post*, p. 45). The result as to 1919 Act houses is apparently to make the rate per cent. for the purpose of this section the rate payable on 25th December, 1918, plus any increase made since that date not exceeding $\frac{1}{2}$ per cent. on the standard rate (see *post*, p. 44).

To get the protection of this provision the mortgagor must himself pay the interest and keep the property in repair. The retention of rents by a mortgagee in possession is not a payment of interest within this provision, nor will the property be deemed to be repaired because the mortgagee might have repaired it out of the rents (*Walters* v. *White*, 33 T. L. R. 154).

The language of this sub-section is very wide. In cases where it applies a notice calling in a mortgage will be inoperative, and any purported sale void. The mortgagor might, no doubt, apply for a declaration that the notice is invalid, and the mortgagee would probably be ordered to pay the costs, but there is no need to take proceedings. A purchaser from the mortgagee would not get a good title if the mortgagor had fulfilled the conditions set out in the section. And, as regards foreclosure, a mortgagee under this sub-section cannot even commence proceedings, nor can he continue proceedings begun before the Act was introduced (*Welby* v. *Parker*, (1916) 2 Ch. 1). Nor can he sue on the covenant for repayment (see *e.g.*, *London County and Westminster Bank* v. *Tompkins*, *post*, p. 28). The language of the sub-section would also appear sufficient to prevent the mortgagee from taking possession. And it may prevent the appointment of a receiver, though such an appointment is not within the mischief of the Act, and the point is arguable. It is not of great importance, since the happening

of an event to make the power of appointing a receiver exercise-able under the Conveyancing Act will nearly always take the case out of this sub-section altogether.

Unlike the Courts (Emergency Powers) Act, 1914, s. 1, which, except in the case of officers and men of His Majesty's Forces, only applies to mortgages created before the war, this section applies to mortgages whenever they were created. When a mortgage comes within both the Courts (Emergency Powers) Acts and the Increase of Rent, &c. Acts, the provisions of both must be complied with. Thus, the fact that a mortgagor is more than 21 days behind with his interest, and, therefore, the mortgagee is not precluded from selling by this section, does not do away with the necessity of obtaining leave to sell under sect. 1 (1) (b) of the Courts (Emergency Powers) Act, 1914. Applications in such cases, if the mortgaged property is leasehold, are governed by Rule 3, *post*, p. 52. And, conversely, the fact that before this Act was passed leave was granted under the Emergency Act to sell if principal was not paid by a certain date does not take the case out of this section if the date fixed was after this Act came into operation.

Provided that this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exercisable by a mortgagee who was at the twenty-fifth day of November nineteen hundred and fifteen a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage:

As to 1919 Act houses, 4th March, 1919, is substituted for 25th November, 1915 (sect. 4 (ii) of the Act of 1919).

Even where the mortgage is payable by instalments as stated, sect. 1, sub-sect. 1, applies, and the rate of interest cannot be raised, though the mortgagee is not restrained from selling, foreclosing, &c. Similarly as to the mortgagee who was in possession on November 25th, 1915. It will be remembered that the Courts (Emergency Powers) Act, 1914, may apply, so as to render the Court's leave necessary, though this Act does not. But the former Act does not apply to sales by mortgagees in possession, at any rate if the property is land and not pure personalty, and a mortgagee who has appointed a receiver who is

still acting is for this purpose deemed to be in possession (Courts (Emergency Powers) (No. 2) Act, 1916, s. 1 (1)).

From the mention in this saving clause of the power of sale only, it was argued in *Walters* v. *White*, 33 T. L. R. 154, that in the case of a mortgage to which the Act applies the remedy of a mortgagee in possession is now limited to selling. Sargant, J., however, held that the saving clause was only inserted *ex abundanti cautela*, and had not this effect. A mortgagee in possession can foreclose, just as a mortgagee not in possession may foreclose, if the mortgagor has not fulfilled the conditions necessary to give him the protection of this section. And the same remark applies to the mortgagee's other remedies.

Provided also that if, in the case of a mortgage of a leasehold interest, the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this subsection shall not apply to such mortgage.

This obviates a hardship that might otherwise arise where money has been lent on leaseholds, and by lapse of time the term is likely to become too short to be a sufficient security for the amount advanced.

As to the proper court to which to apply, see Rule 2, and see Rule 3 (2) (b) of the Courts (Emergency Powers) Rules, 1918. The application is by summons in Form 2 (Rule 4).

2. *Interpretation and application.*—(1) For the purposes of this Act except where the context otherwise requires:—

(a) The expression "standard rent" means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let: [*Provided that if the rateable value of the dwelling-house on the said third day*

of August exceeds the standard rent as so defined, that rateable value shall as respects that house be deemed to be the standard rent. Provided that in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease the maximum rent payable under such tenancy agreement or lease shall be the standard rent].

The words in brackets were inserted by the Act of 1919, and the proviso printed in italics only applies to 1919 Act houses. (See sect. 4 and sect. 7 of the Act of 1919, *post*.)

Illustration.—A "small dwelling-house" was on August 3rd, 1914, let to A. at 24*l*. per annum. It has since been let to B. at 26*l*. and then to C. at 28*l*. The standard rent is 24*l*.

Houses erected after or in course of erection at 2nd April, 1919, are not within the Acts, and have no standard rent (*post*, p. 50).

(b) The expression "standard rate of interest" means in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest:

While the standard rent is the same for every tenancy of the same property the standard interest may vary with each successive mortgage thereon. If on August 3rd, 1914, there was a mortgage on a small dwelling-house carrying interest at 4 per cent. and that mortgage has been paid off and a fresh mortgage given which carries interest at 5 per cent., the standard rate is 5 per cent. and not 4 per cent.

The application of this provision in the case of a transfer of a mortgage is not very clear. Suppose that A. is the owner of property coming within this Act, which at the outbreak of the war was in mortgage to B. at 5 per cent. In December, 1914, B. called in his mortgage and A. arranged with C. to pay B. off and take a transfer of the mortgage, the rate of interest, however, to be in future $5\frac{1}{2}$ per cent. A. joins in the transfer and gives a fresh covenant to pay $5\frac{1}{2}$ per cent. interest, and a new proviso for redemption is inserted. Must A. now pay 5 or $5\frac{1}{2}$ per cent.? Is the existing mort-

gage a mortgage which was in force on the 3rd August, 1914, or a mortgage created since that date? The latter, we think, the transfer being only a conveyancing device to effect what is really a new mortgage. There would have been no doubt on the point if the transaction had been carried through by reconveyance and fresh mortgage, and the mere form should make no difference.

(c) The expression "rateable value" means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a house or part of a house first assessed after that date, the rateable value at which it was first assessed:

There is no reported decision as to the meaning of "rateable value" in this clause. Probably it means the net rateable value and not the gross value. It has been held in the County Court that this is the true meaning (VII. Law Journal County Courts Reporter, 49).

(d) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor:

(e) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 (38 & 39 Vict. c. 87) and 1897 (60 & 61 Vict. c. 65).

(2) This Act shall apply to a house or a part of a house let as a separate dwelling where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where either the annual amount of the standard rent or the rateable value of the house or part of the house does not exceed—

(a) in the case of a house situate in the metropolitan police district, including therein the city of London, thirty-five pounds;

(b) in the case of a house situate in Scotland, thirty pounds; and

(c) in the case of a house situate elsewhere, twenty-six pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies: Provided that this Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

It should be noted that for the purpose of the Act a house may, and in practice often will, consist of a flat or even of a single room. On the other hand, where a room is let to a lodger, *i.e.*, one who pays a sum to cover board, attendance, etc., as well as lodging, the Act has no application. As to furnished dwelling-houses, see *post*, p. 48.

As to whether a house falls within the section two independent *criteria* are provided. The section will apply (1) if the standard rent does not exceed an amount which varies with the locality, or (2) if the rateable value does not exceed that amount. In other words, to be outside the section both rent and rateable value must be above the stated amount. A different principle has been applied to houses brought within the scope of the Acts for the first time by the Act of 1919 (*post*, p. 42). For definition of rateable value see sub-sect. 1 (c), *ante*, p. 25.

It is important to notice that the Act only applies where the house is "let." Therefore, if a mortgagor of a small dwelling-house is himself occupying the house, there is nothing in this Act to prevent the mortgagee from calling in his money and raising the interest.

The section is not very clearly drawn, and its application may give rise to difficulties where part of the premises is used as a shop. If a shop alone were let, there would be no "dwelling," and the Act would not apply. But where shop and dwelling rooms over or at the back are let together, a question may arise whether the letting includes "any land other than the site of the dwelling-house and a garden or other premises within the curtilage." Our own opinion expressed in former editions is that the case falls within the Acts. This view is confirmed by the Court of Appeal decision in *Epsom Grand Stand Association, Limited* v. *Clarke*, 35 T. L. R. 525, where licensed premises were held to be within the Acts.

In *Scott* v. *Austin*, (1919) W. N. 85, Rowlatt, J., said,

"premises within the curtilage" means "premises domestically appurtenant to the dwelling-house." In that case the letting was of a cottage on a building estate where similar cottages were to be built, each with a small piece of ground behind it. It so happened that at one side of the cottage in question similar houses had not been built, their sites forming an open piece of ground on one side of the cottage about one-fifth of an acre in extent. This space and the cottage were let together and were surrounded by a continuous fence, the space forming a garden to the cottage. Held, it was a garden within the curtilage.

(3) Where, for the purpose of determining the standard rent or rateable value of a dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed or the rateable value of the property in which that dwelling-house is comprised, a county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

This is necessary in order that where the tenancy is, *e.g.* of a single room it may be possible to ascertain the standard rent or rateable value of that room.

Illustration.—On August 3rd, 1914, a house was rated at 80*l.* One of the upper floors is now let to a tenant. The County Court decides that of the 80*l.* rateable value only 20*l.* is properly attributable to the upper floor. The tenant of the upper floor gets the benefit of the Act.

As to the words "final and conclusive," see *ante*, p. 14.

The application is made to the County Court of the district in which the dwelling-house is situate (Rule 1) by summons in Form 3 (Rule 4).

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein except that it shall not apply—

(a) to any mortgage comprising one or more dwelling-houses to which this Act applies and

other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage, or

(b) to an equitable charge by deposit of title deeds or otherwise.

This must be read in conjunction with sub-sect. (2), *supra*. A mortgage of a farm, for instance, is not brought within the Acts by the fact that the rateable value of the house and buildings is more than one-tenth of the rateable value of the whole land comprised in the mortgage; for the letting includes the land, and the farm house will probably not be a dwelling-house within sub-sect. (2) of this Act or sect. 4 of the Act of 1919.

As regards equitable charges, it has been held by Sargant, J., in *Jones* v. *Woodward*, (1917) W. N. 61, that the words "or otherwise" are not *ejusdem generis*, but are equivalent to "by some other process than the deposit of deeds"; so that an equitable charge which is created by writing, without any deposit of title deeds, is within the exception and outside the Acts. The meaning of "equitable charge" was very fully discussed by the Court of Appeal in *London County and Westminster Bank, Ltd.* v. *Tompkins*, (1918) 1 K. B. 515. The document in that case was in the usual stringent form employed by bankers. Tompkins in 1912, as security for a present or future overdraft, deposited with the plaintiff bank the title deeds of certain small dwelling-houses, and executed a deed in which he undertook to pay on demand the moneys that should for the time being be due from him to the bank, and he thereby charged his interest in the property comprised in the deeds with payment of the said moneys on demand; he declared that the bank should be deemed mortgagees under the deed of all the premises thereby charged; he undertook on request to execute a legal or other mortgage of the premises; he gave the bank a power of sale on default in payment; he declared that during the continuance of the security he would hold the property charged in trust for the bank, with power to the bank to remove him from being trustee and to appoint themselves or any persons to be trustees and to make a declaration vesting all his said estate and interest in such new trustees; and he irrevocably appointed certain officials of the bank to be his attorneys for executing certain documents, including a conveyance of his estate and interest in the premises. In 1917 the plaintiffs sued to recover the amount

due on the overdraft. The Court of Appeal held that the document was an "equitable charge," and therefore outside the Act of 1915, so that the action was maintainable. Pickford, L.J., was of opinion that the document was not a "mortgage" at all, which he understood to mean what Lindley, M.R., said it meant in *Santley* v. *Wilde,* (1899) 2 Ch. 474, viz., "A conveyance of land as a security for the payment of a debt or the discharge of some other obligation for which it is given." Bankes and Scrutton, L.JJ., on the other hand, thought it was a mortgage, which term they said includes an equitable mortgage. But all the judges were of opinion that, whether it was a "mortgage" or not, it certainly was an "equitable charge" within the exception, and therefore the Act did not apply to it.

A formal mortgage of an equity of redemption—in other words, a second, third, or subsequent mortgage—appears to be within the Act. It is not made to secure only a temporary loan. It does convey an interest in property, though only an equitable interest. This view finds support from the wording of sect. 1, sub-sect. 4, which contemplates that the Act may in some cases apply to a mortgagor who is liable to pay interest under a prior incumbrance.

A covenant to surrender copyholds without any actual surrender, the mortgagor appointing the mortgagee his attorney to make the surrender, would appear to be an equitable charge and therefore outside the Act.

(5) Where this Act has become applicable to any dwelling-house or any mortgage thereon it shall continue to apply thereto whether or not the dwelling-house continues to be a dwelling-house to which this Act applies.

This is rather Irish, but can be made clear by an illustration. Suppose a house is just within the Acts having regard to the amount of the rent it is let at. The landlord spends 100*l.* in improvements and adds 6*l.* to the rent or raises the rent by the amount of the increased rates he has to pay, both of which things he is entitled to do. Even if this brings the rent over the statutory limits mentioned in this section and sect. 4 of the 1919 Act, the house is still within the Acts and the rent cannot be further raised at discretion.

(6) Where the rent payable in respect of any tenancy of a dwelling-house is less than two-thirds

of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house, and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or had ever existed.

This section is printed as amended by sect. 7 of the Courts (Emergency Powers) Act, 1917, *post*, p. 35. Originally the word "standard" appeared before the word "rent" in the first line. To talk of "standard rent" in respect of a tenancy excluded from the Act was obviously a slip. "Standard rent" only exists in the case of a dwelling-house to which the Act applies. The words from "and this Act shall apply" to the end were added by the amending section. At first sight they appear contradictory, but the meaning obviously is that, if at the expiration of a tenancy where the rent is less than two-thirds of the rateable value, the rent is raised up to or above the two-thirds, the new rent becomes the standard rent, and cannot afterwards be raised (see definition of "standard rent," sect. 2 (1) (a), *supra*, p. 23).

The chief effect of this sub-section is to take "ground rents" out of the Act. The Act does not therefore prevent the ground landlord from increasing his "ground rent" if the property has appreciated in value when the lease falls in. Nor is he protected by the Act as against his mortgagee.

3. *Rules as to procedure.*—The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may by those rules or directions provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

The English rules are set out *post*, p. 51.

4. *Application to Scotland and Ireland.*—(1) This Act shall apply to Scotland, subject to the following modifications:—

"Mortgage and incumbrance" mean a heritable

security; "fine" means grassum or consideration other than rent; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security; "covenant" means obligation; "mortgaged property" means the heritable subject or subjects included in a heritable security; "rateable value" means yearly value according to the valuation roll; "rateable value on the third day of August nineteen hundred and fourteen" means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen; "assessed" means entered in the valuation roll; "committed waste" means "wilfully destroyed the property"; "land" means lands and heritages; "enactments relating to compounding" include the House-letting and Rating (Scotland) Act, 1911 (1 & 2 Geo. 5, c. 53); "rate" means assessment as defined in the last-mentioned Act; "Lord Chancellor" means the Court of Session; "rules" means act of sederunt; and "county court" means the sheriff.

See further sect. 9 of the Act of 1919.

(2) This Act shall apply to Ireland subject to the following modifications:—

(a) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor;

(b) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66);

(c) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts: Provided that where part of a house let as a separate dwelling is not separately valued under those Acts, the Com-

missioner of Valuation and Boundary Surveyor may on the application of the landlord or tenant make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise.

See further sect. 10 of the Act of 1919.

5. *Short Title and Duration.*—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

(2) This Act shall continue in force during the continuance of the present war and for a period of six months thereafter and no longer, but the expiration of this Act shall not render recoverable any rent or interest which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

This is now subject to sect. 1 of the Act of 1919, *post*.

"Continuance of the present war." See Termination of the Present War (Definition) Act, 1918, p. 39.

As to sums recoverable by the tenant, see *ante*, p. 17, and sect. 5 of the Act of 1917, *post*, p. 33.

COURTS (EMERGENCY POWERS) ACT, 1917.

7 & 8 Geo. 5, c. 25.

An Act to amend the Courts (Emergency Powers) Acts, 1914 to 1916, and the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and to grant relief in connexion with the present war from liabilities and disqualifications arising out of certain contracts.

[10th July 1917.]

The only sections which affect the Increase of Rent, &c. Act, are the following:—

4. *Power to accept premiums on leases for 21 years or upwards.*—(1) Sub-section (2) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall not apply to a lease of a dwelling-house for a term of twenty-one years or upwards.

(2) Section two of the Courts (Emergency Powers) (No. 2) Act, 1916 (6 & 7 Geo. 5, c. 18), is hereby repealed.

The result is that on granting a lease for 21 years or more the lessor can take a fine, premium, or other like sum in addition to the rent, a thing which he could not do at all between the introduction of the Act of 1915 and the passing of the Courts (Emergency Powers) (No. 2) Act, 1916 (*Rees* v. *Marquis of Bute*, (1916) 2 Ch. 64), and after the latter Act only with the leave of the County Court. See note to sect. 1 (2) of the Act of 1915, *supra*, p. 18.

5. *Provisions as to sums made irrecoverable by 5 & 6 Geo. 5, c. 97.*—(1) Where any sum has, whether before

or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which by virtue of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, would have been irrecoverable by the landlord or mortgagee, the sum so paid shall at any time within six months after the date of payment, or, in the case of a payment made before the passing of this Act, within six months after the passing thereof, be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by such tenant or mortgagor from any rent or interest payable within such six months by him to such landlord or mortgagee.

This overrides the decision in *Sharp Brothers and Knight* v. *Chant*, (1917) 1 K. B. 771. In that case the landlord of a dwelling-house, to which the Act of 1915 applied, in March, 1915, increased the tenant's rent by 6*d*. a week. The tenant paid the increased rent, and, in ignorance of the Act, continued to do so until January 31, 1916. Having then become aware of the Act, he deducted from his subsequent payment of rent the total amount of the increase over the standard rent which he had paid between November 25, 1915, and January 31, 1916. In an action by the landlord to recover the amount so deducted, it was held by the Court of Appeal that the amount overpaid by the tenant was not a "fine, premium, or other like sum" which he was entitled to deduct from his rent under sect. 1 (2) of the Act of 1915, and that, as he had paid the increase under mistake of law, he could not recover it from the landlord in any shape or form.

Overpaid rent or interest can now be recovered. Where there has been no change of landlord or mortgagee, the tenant or mortgagor may deduct the amount overpaid from his rent or interest. If there has been a change of landlord or mortgagee, an action will have to be brought against the former landlord or mortgagee or his executor or administrator if he refuses to refund the amount on demand. Owing to the omission of the words "or his legal personal representative" after the word "mortgagee" at the end of the section, it would seem that the executor or administrator of a landlord or mortgagee is legally entitled

to demand the standard rent or interest in full, and compel the tenant or mortgagor to bring an action to recover the overpayments. Certainly if the personal representative has passed the property on to the beneficiaries, the only method of recovering the overpayments is to sue the personal representatives.

(2) If any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of the said Act is irrecoverable, or if, where any such entry has before the passing of this Act been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to delete the entry, he shall on summary conviction be liable to a fine not exceeding ten pounds.

This was intended to put a stop to the unscrupulous practice of frightening tenants into paying more than the standard rent by entering up the irrecoverable increase in the rent-book as "arrears," falsely asserted to be payable when the Acts cease to operate. The average tenant does not know sect. 5 of the Act of 1915, *ante*, p. 32.

(3) This section shall be construed as one with the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

7. *Provision as to leases at less than rack rent.*—In sub-section (6) of section two of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, which relates to tenancies at less than rack rent, the word "standard" shall be omitted, and at the end of the sub-section there shall be inserted the following words "and this Act shall apply in respect of such dwelling house as if no such tenancy existed or had ever existed."

See note to sect. 2 (6) of the Act of 1915, *ante*.

10. *Short title.*—This Act may be cited as the Courts (Emergency Powers) Act, 1917.

INCREASE OF RENT, &c. (AMENDMENT) ACT, 1918.

8 GEO. 5, c. 7.

An Act to restrict the meaning of the expression landlord in subsection (3) *of section one of the Increase of Rent and Mortgage Interest* (*War Restrictions*) *Act*, 1915.

[2nd May, 1918.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *Restriction of meaning of landlord in* 5 & 6 *Geo.* 5, *c.* 97, *s.* 1 (3).—Subsection (3) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall have effect as if at the end thereof the following provision was inserted:—

> "For the purposes of this subsection the expression 'landlord' shall not include any person who since the thirtieth day of September nineteen hundred and seventeen has become landlord by the acquisition of the dwelling-house or any interest therein otherwise than by the devolution thereof to him under a settlement made before the said date, or under a testamentary disposition or an intestacy,"

and the provisions of the said subsection with respect to orders made but not executed before the passing of that Act, shall apply to orders made but not executed

before the passing of this Act, as if this Act had been substituted for that Act in the said subsection :

Provided that this enactment shall not apply in any case where the Court is satisfied by certificate given by or on behalf of the Board of Agriculture and Fisheries (or as regards premises in Scotland by the Board of Agriculture for Scotland, or in Ireland the Department of Agriculture and Technical Instruction for Ireland) that the premises in question are required for the occupation of a person engaged or employed in agricultural work of urgent national importance.

See, however, sect. 5, sub-sect. 2, of the Act of 1919, which goes a long way towards practically repealing this section. Sect. 1 (3) of the Act of 1915 restricted the making of ejectment orders against tenants of small dwelling-houses. But the Court was allowed to make an ejectment order if the premises were reasonably required by the landlord for the occupation of himself or some person in his employ or in the employ of a tenant from him, a provision inserted to assist the carrying on of businesses of national importance, especially agriculture; but the shortage of houses due to the war caused it to be exploited in ways unforeseen. Those desirous of getting house room found that the sitting tenant could not be made to go so long as he paid his rent and behaved himself, unless the landlord reasonably required the house for his own occupation. The thing to do, therefore, was to buy the house and become the landlord. The Courts might have thwarted the practice by holding that it was not "reasonable" to turn out an unobjectionable tenant to make room for the new landlord. But they did not exercise their powers of refusal as fully as they might have done, and Parliament was driven by popular pressure to intervene.

The result of the section as read with sect. 1 (3) of the Act of 1915 is (subject to what is said in the next paragraph) that a person who since the 30th September, 1917, became landlord of a small dwelling-house by acquiring it or any interest in it otherwise than by devolution under a settlement made before that date or under a testamentary disposition or an intestacy—which means, practically, a person who bought the house after the 30th September, 1917—cannot turn the tenant out merely on the ground that he wants to occupy the house himself or wants it for the occupation of

an employee of himself or of some tenant of his. But an ejectment order can be made at the instance of the purchaser on any other ground mentioned in sect. 1 (3) of the Act of 1915; and the exception in favour of agricultural landlords should be noted.

This position is, however, to some considerable extent modified by sect. 5, sub-sect. 2 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, which provides that a person who has purchased after 30th September, 1917, may, notwithstanding the present Act, obtain an order for possession from the Court if he requires the house for occupation by himself or his employee or employee of one of his tenants, provided the Court considers it reasonable to make the order after considering all the circumstances, including the alternative accommodation available for the tenant (see *post*, sect. 5, sub-s. 2, Act of 1919).

Where the owner being himself in possession sells the house, this Act does not prevent the purchaser from recovering possession, for there is no tenancy, unless of course there is an agreement that vendor be allowed to stay on till he has found another house.

2. *Short title.*—This Act may be cited as the Increase of Rent, &c. (Amendment) Act, 1918.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1919.

9 Geo. 5, c. 7.

An Act to extend, amend and prolong the duration of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and the enactments amending that Act. [2nd April, 1919.]

1. *Prolongation of duration of principal Act.*—The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (hereinafter referred to as the "principal Act"), and the enactments amending that Act, shall continue in force until Lady Day nineteen hundred and twenty-one, but during the period (hereinafter referred to as "the extended period") between the time when but for this Act the principal Act would have expired and the said Lady Day the principal Act shall have effect subject to the modifications contained in the two next succeeding sections.

The principal Act provided that it should continue in force "during the continuance of the present War and six months after." The Termination of the Present War (Definition) Act, 1918, has provided that the date (to be as near the formal ratification of Peace as possible) of determination of the War may be declared by Order in Council, and the War shall be treated as ending on that date for the purpose of any provision in any statute. The date therefore at which the principal Act would have, apart from the present amending Act, expired, is six months after the date so fixed by Order in Council. This date may conveniently be referred to as "Termination of the War."

The result of this section as read with the succeeding ones is:—

As to "1915 Act houses" the provisions of the principal Act forbidding increase of rent or mortgage interest remain in full force till six months after the "Termination of the War." From six months after that date till Lady Day, 1921, the restrictions of the Acts continue in force subject to these modifications: (1) rent is increasable by 10 per cent. on the standard rent subject to the provisions of sect. 2 of this Act; (2) mortgage interest may be increased by $\frac{1}{2}$ per cent. on the standard rate provided that when so increased the rate is still not over 5 per cent. (sects. 2 and 3, *post*).

As to "1919 Act houses," owing to the provisions of sect. 4, *post*, increases of rent or mortgage interest not later than Christmas, 1918, are valid and enforceable, the Acts not applying. Increases since that date are as from 4th March, 1919, invalidated so far as they exceed 10 per cent. on the standard rent or $\frac{1}{2}$ per cent. on the standard rate of interest. There is, however, no limit of the total rate of interest as regards this class of house, so that if the standard rate of interest is 5 per cent., increase to $5\frac{1}{2}$ per cent. is admissible. It will be noticed that within the limits indicated increase of rent or interest in respect of this class of house may take place before the expiry of six months from the "Termination of the War."

2. *Limited power of increasing rents during the extended period.*—(1) An increase in the rent of a dwelling-house to which the principal Act applies payable in respect of the extended period or any part thereof which would but for the principal Act be recoverable, shall be recoverable if or so far as the amount of the increase does not exceed ten per centum of the standard rent:

This section only operates as from six months after the "Termination of the War" and only applies to "1915 Act houses" (sect. 1, *ante*). The result of the section where applicable is that if landlord and tenant agree to increase the rent of a small dwelling-house from, *e.g.* £20 per annum to £22 per annum, as from six months after the "Termination of the War," this agreement to pay the extra £2 is enforceable. Had the agreement been to pay £24 it would be enforceable as to £22 only—this in virtue of the "if or so far as."

The 10 per cent. must be reckoned on the standard rent.

It is possible that under sect. 1, sub-s. 1 (iv) of the principal Act the actual rent payable by the tenant may be the standard rent plus an increase to compensate the landlord for increased rates, *e.g.* the standard rent is £20, but the rent actually payable has been increased to £21. The 10 per cent. must be calculated on the £20—not on the £21; similarly with regard to increases under sect. 1, sub-s. 1 (ii).

Provided that no such increase shall be due or recoverable if the sanitary authority of the district in which the house is situate on the application of the tenant certifies that the house is not reasonably fit for human habitation or is not kept in a reasonable state of repair, nor in any case until or in respect of any period prior to the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, and informing the tenant of his right to apply to the sanitary authority for such a certificate as aforesaid.

" Provided that no such increase shall be due or recoverable . . . . until or in respect of any period prior to the expiry of four clear weeks."

Cp. the language of sect. 1, sub-s. 1 (vi) of the principal Act and the note thereon, which equally applies here.

(2) On any such application to a sanitary authority a fee of one shilling shall be payable, but if the authority, as a result of the application, issues such a certificate as aforesaid the tenant shall be entitled to deduct the amount of the fee from any subsequent payment of rent.

(3) The increase of rent permitted by this section shall be in addition to any increase permitted by section one of the principal Act.

3. *Limited power of increasing rate of mortgage interest.*—Nothing in the principal Act shall prevent an increase in the rate of interest payable in respect of the extended period on a mortgage to which the principal Act applies, if the increase does not exceed one half per centum per annum, and the rate when so increased does not exceed five per centum per annum, and subsection 4 of section one of the principal Act

shall apply as if the reference therein to the standard rate included a reference to such increased rate.

This section only applies to mortgages of "1915 Act houses" (sect. 1), and only operates as from six months after "Termination of the War." Mortgages of "1919 Act houses" are dealt with by sect. 4, and as to these the rate of interest is increasable by $\frac{1}{2}$ per cent. even before six months from "Termination of the War," and without reference to any maximum of 5 per cent.

4. *Extension of principal Act to higher-rented houses.*—As from the passing of this Act, the principal Act and the enactments amending that Act shall extend to houses or parts of houses let as separate dwellings where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where—

(a) in the case of a house situated in the metropolitan district, including the City of London, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed thirty-five pounds, and neither exceeds seventy pounds;

(b) in the case of a house situate in Scotland, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed thirty pounds, and neither exceeds sixty pounds;

(c) in the case of a house situated elsewhere, both the annual amount of the standard rent and the rateable value of the house or part of the house exceeds twenty-six pounds, and neither exceeds fifty-two pounds;

and shall also extend to mortgages (not being mortgages to which the principal Act as originally enacted applies), where the mortgaged property consists of or comprises one or more of such dwelling-houses as aforesaid or any interest therein, subject, however, to the exceptions mentioned in subsection (4) of section two of the principal Act, but in the application

to those houses and mortgages the principal Act and the enactments amending that Act shall have effect, subject to the following modifications:—

Where notice to quit, expiring on March 25, 1919, had been given in respect of a Surrey house rented at £50, and not within the 1915 Act, and the tenant held over till after the passing of this Act, it was held that this Act applied (*Dobson* v. *Richards*, (1919) W. N. 166).

It will be observed that the criterion of a "1919 Act house" differs from that of a "1915 Act house." A house falls within the 1915 Act if either rent or rateable value does not exceed the figure specified in sect. 2, sub-sect. 2 of that Act. If both rent *and* value exceed that figure it is not caught by the 1915 Act, but will still be caught by this Act if neither the rent nor the rateable value exceeds the figure mentioned in this section. But this Act will not apply if the rent exceeds that figure, even though the rateable value do not, nor *vice versâ*. The figure taken as criterion under this section is just double the similar figure taken by the principal Act.

(i) for subsection (1) of section one of the principal Act, exclusive of the provisoes to that subsection, the following provisions shall be substituted:—

Where the rent of a dwelling-house to which this Act applies or the rate of interest on a mortgage to which this Act applies has been since the twenty-fifth day of December nineteen hundred and eighteen, or is hereafter increased and such increase would apart from this Act have been recoverable, then, if the increased rent exceeds by more than ten per centum the standard rent, or the increased rate of interest exceeds by more than one half per centum per annum the standard rate, the amount of such excess above the said ten per centum or one half per centum, as the case may be, shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be, and, if paid, may be recovered by the tenant or mortgagor in the

manner and subject to the provisions of subsection (1) of section five of the Courts (Emergency Powers) Act, 1917 :

This provision only applies to "1919 Act houses." These are under the same restrictions as the "1915 Act houses," except that (1) the increase of 10 per cent. rent and $\frac{1}{2}$ per cent. mortgage interest may commence even before the expiry of six months from "Termination of the War"; and (2) the increase of interest is only forbidden in excess of $\frac{1}{2}$ per cent.—there is no limit of the total interest to 5 per cent.

It will be observed that the clause is retrospective and applies to increases, though they occurred before the Act if they occurred after 25th December, 1918. In this connection, however, the next succeeding proviso must be carefully observed. Increases since 25th December, 1918, are, it is true, invalidated if they exceed the specified limits, but only invalidated as from 4th March, 1919. Thus, if the rent in August, 1914, was £40 and the rate of mortgage interest 4 per cent., and these figures were increased to £52 and 5 per cent. respectively as from 1st January, 1919, these increases were effective till 4th March, 1919, but from then only valid to the extent specified. That is, the tenant cannot recover anything in respect of the rent from 1st January to 3rd March paid at the rate of £52, but will in future only be liable to pay £44 rent. The mortgage interest will have to be calculated at 5 per cent. from 1st January to 3rd March, but thereafter at $4\frac{1}{2}$ per cent. only. If, as is probable, the next payment is due on 1st July, 1919, an apportionment should be made.

Probably the practical result of this not very satisfactorily drawn provision is in general, but by no means always, the same as if the definitions of standard rent and standard rate of interest had been applied to "1919 Act houses" with 25th December, 1918, substituted for 3rd August, 1914, with the addition of the 10 per cent. and $\frac{1}{2}$ per cent. increases. The language, however, may give rise to awkward questions where, in respect of "1919 Act houses," the rent or mortgage interest was increased before 26th December, 1918. Where such an increase has taken place it would seem to be effective and not within the restrictions of the Act, though the Act may prevent further increase. Thus, if a "1919 Act house" was in mortgage in August, 1914, at 4 per cent. and the rate was increased in August, 1916, to 5 per cent., the present section apparently does not prevent this 5 per cent. from still being payable. But an agreement by the mortgagor after 25th December, 1918, increasing the interest to $5\frac{1}{2}$ per cent.

is not binding after the 3rd March, 1919, for this is an increase of more than $\frac{1}{2}$ per cent. on the standard rate of 4 per cent. Mutatis mutandis the same thing is true of rent. It is perhaps a pity that the definitions of standard rent and standard rate of interest were not revised in their application to "1919 Act houses," and the fact that this is not done may give rise to difficult cases.

(ii) in proviso (i) to subsection (1) and subsections (2) and (4) of section one of the principal Act the fourth day of March nineteen hundred and nineteen shall be substituted for the twenty-fifth day of November nineteen hundred and fifteen;

See these subsections, *ante*.

(iii) in subsection (3) of section one of the principal Act references to the date of the passing of the principal Act shall be construed as references to the date of passing of this Act;

This Act was passed on 2nd April, 1919.

(iv) in subsection (4) of section one of the principal Act for the reference to the standard rate there shall be substituted a reference to the rate permitted by this section;

(v) at the end of paragraph (a) of subsection (1) of section two of the principal Act there shall be inserted the following proviso:—

Provided that, if the rateable value of the dwelling-house on the said third day of August exceeds the standard rent as so defined, that rateable value shall, as respects that house, be deemed to be the standard rent.

Thus at 3rd August, 1914, a house was let out of charitable motives to an aged relative at £50 per annum, though the rateable value was £65. The original tenant is dead, and the landlord desires to re-let. The standard rent is not £50 but £65.

It will be noted that this clause only applies to "1919 Act houses."

5. *Minor amendments of the principal Act.*—(1) A landlord of a house to which the principal Act, either as originally enacted or as extended by this Act, applies shall, on being so requested by the tenant of the house, furnish to him a statement as to what is the standard rent of the house, and if he fails within fourteen days to do so, or furnishes a statement which is false in any material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten pounds.

In this connection it is important to bear in mind the definition of standard rent (sect. 2, sub-s. 1 of the principal Act) and to observe that such rent is not necessarily that actually payable by the tenant, which may be a higher figure owing to the landlord having done repairs or to a rise in rates (sect. 1, sub-s. 1 (ii) and (iv) of the principal Act), or there may have been an increase up to 10 per cent. under this Act. In such cases the convenient thing would be for the landlord to state the standard rate and add particulars as to the increase made.

(2) Where a person who has, since the thirtieth day of September nineteen hundred and seventeen, purchased a house to which the principal Act, either as originally enacted or as extended by this Act, applies, requires the house for his own occupation or that of some person in his employ, or in the employ of some tenant from him, nothing in the Increase of Rent, &c. (Amendment) Act, 1918, shall be construed as preventing the court from making an order for the recovery of possession of the house, if, after considering all the circumstances of the case, including especially the alternative accommodation available for the tenant, the court considers it reasonable to make such an order.

This section imposes very considerable limits on the operation of the Act of 1918 (which see *ante*). As to the words "person in his employ or in the employ of some tenant from him," see *Rex* v. *Rogers, Ex parte Hodson*, (1918) W. N. 128, *ante*, p. 20.

It is perhaps not clear whether "a person who has since 30th September, 1917, purchased," refers only to persons who purchased after that date and before the coming into operation of this Act (viz. 2nd April, 1919), or includes also purchasers who bought after the Act came into force. Contrast the language of sect. 4 (1), "has been since 25th December, 1918, *or is hereafter* increased."

The Acts, indeed, give rise to a good many difficulties as regards vendor and purchaser. As already noticed, the fact of the owners desiring to sell with vacant possession is not a satisfactory ground for an ejectment order against the tenant under sect. 1, sub-s. 3 of the principal Act (*Stovin* v. *Fairbrass*, *ante*, p. 20). If the owner sells under a contract to give vacant possession and finds that the tenant taking advantage of the Acts refuses to go, the purchaser will be entitled to rescind his contract, and might apparently even sue for substantial damages, since it would seem that the *Bain* v. *Fothergill* (L. R. 7 H. L. 188) rule would not apply. (See 36 Law Notes, p. 256, and cases there cited.)

Where the contract for sale with vacant possession was entered into though not completed before the Act, the purchaser could apparently rescind, but no claim for damages arose.

(3) The principal Act, both as originally enacted and as extended by this Act, shall have effect as if in proviso (vi) to subsection (1) of section one of that Act after the word "until" there were inserted the words "or in respect of any period prior to."

See *ante*, p. 16.

(4) Any rooms in a dwelling-house the subject of a separate letting as a dwelling shall, for the purposes of the principal Act and this Act, be treated as a part of a house let as a separate dwelling.

The object of this clause is obscure. Its effect is, no doubt, that where a tenant takes one or two rooms in a house for the purpose of dwelling in them the tenancy of the rooms will be within the Act. But since the rooms were surely, apart from this clause, "a part of a house" within sect. 2, sub-s. 2 of the principal Act, this clause appears to do no more than repeat the existing rule. Accepted on this basis by the Commons as "harmless," after being inserted by the Lords, the clause may yet have unforeseen effects on the construction of the Act.

6. *Limitation on rent of houses let furnished.*—(1) Where the occupier of a dwelling-house to which the principal Act, either as originally enacted or as extended by this Act, applies, lets, or has, before the passing of this Act, let the house or any part thereof at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the lessee that the rent charged yields to the occupier a profit more than twenty-five per centum in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per centum, shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the lessee, and, without prejudice to any other method of recovery, may be recovered by him by means of deductions from any subsequent payments of rent.

(2) For the purpose of this section "normal profit" means the profit which might reasonably have been obtained from a similar letting in the year ending on the third day of August, nineteen hundred and fourteen.

This section only applies to dwelling-houses which, apart from the fact of their being let furnished, would fall within the Act, having regard to their rent and rateable value—at least this seems to be the effect, though the words "dwelling-house to which the principal Act . . . applies" are not very apt for the purpose, since the Acts do not, apart from this section, apply to houses let furnished. It may be indeed that on a strict interpretation this section has no application unless the house was on 3rd August, 1914, or has since been let unfurnished, and does not apply where there has never been a letting on 3rd August, 1914, or thereafter, except as a furnished house.

The section is retrospective, and the excess rent is recoverable for any period after 2nd April, 1919, whatever the date of the letting.

The principal Act (see sect. 2, sub-s. 2) did not apply to

lettings of furnished houses, nor does the present section bring them within the general provisions of the Acts—furnished houses continue outside the general scope of the Acts, but are in some cases subjected to the much narrower provisions of this section. No additional security of tenure is given the tenant of a furnished dwelling-house, *e.g.* if he holds as weekly tenant the landlord can determine the tenancy by notice and the tenant must go—there is nothing to prevent the landlord suing for possession; the section only enables the County Court to invalidate a claim for rent beyond the specified limits during such period as the letting endures.

The result will probably be in practice that landlords will refuse to let furnished houses except on weekly tenancies or quite short terms, and the tenant will therefore not find it worth his while to apply to the County Court, knowing that such action would mean an early termination of his tenancy with no chance of renewal.

"Any period after the passing of this Act," *i.e.* after 2nd April, 1919. The section applies whenever the tenancy commenced, but only enables excess rent to be recovered by the tenant where it was paid in respect of a period after that date.

The definition of normal profit may give rise to difficult cases. In the case of a furnished house at the seaside, *e.g.* the rent and profit obtainable vary considerably according to the time of year. The words "similar letting" apparently involve a July let of 1919 being compared with a July let of 1914.

For mode of application, see p. 69, *post*.

7. *Amendment of definition of standard rent.*—At the end of paragraph (a) of subsection (1) of section two of the principal Act, the following words shall be inserted:—

> Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent.

This section deals with cases of a progressive rent, *i.e.* a rent which, beginning at a smaller figure, gradually rises from year to year. Such rents are said to be frequent under various philanthropic building schemes for veteran soldiers and others. This provision enables the rent to "progress" according to the agreement unhampered by the restrictions of these Acts.

8. *Exception of new houses.*—Neither the principal Act nor this Act shall apply to houses erected after or in course of erection at the passing of this Act.

Viz., 2nd April, 1919.

9 *Application of Act to Scotland.*—In the application of this Act to Scotland—

(a) the twenty-eighth day of May shall be substituted for Lady Day and the local authority under the Public Health (Scotland) Act, 1897, shall be substituted for the sanitary authority;

(b) as from the commencement of the extended period the principal Act shall be amended by the insertion in proviso (iv) of subsection (1) of section one, after the word "dwelling-house" where first occurring therein, of the words "or where by the law of Scotland owners' rates are chargeable on the landlord of any dwelling-house."

10. *Application of Act to Ireland.*—In the application of this Act to Ireland—

(a) the first day of May shall be substituted for Lady Day in the case of tenancies where the former day is the gale day;

(b) the medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two of this Act, and the issue of certificates and the payment of fees in connexion with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland.

11. *Short title and construction.*—This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, and shall be construed as one with the principal Act.

RULES.

Rules for Ireland were made on the 24th March, 1916.

THE INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) RULES, 1916, DATED JANUARY 29, 1916, MADE BY THE LORD CHANCELLOR UNDER THE INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915 (5 & 6 GEO. 5, c. 97).

Preliminary.

The following Rules under the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (in these Rules referred to as the Act), shall apply to the County Courts and to the City of London Court, which shall for the purposes of these Rules be deemed to be a county court.

Rule 3 of these Rules, as to applications under the Courts (Emergency Powers) Act, 1914, shall apply also to the High Court; and the rules made under that Act shall have effect subject to that Rule.

These Rules may be cited as the Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916, and shall come into operation on the fourteenth day of February, 1916.

Applications under Section 1, *subsection* 1, *proviso* (iii.); *Section* 1, *subsection* 4, *proviso* 2; *or Section* 2, *subsection* 3.

1. An application to the county court under the Act—

(a) to determine any question as to the increase of rent of a dwelling house to which the Act applies, pursuant to proviso (iii.) to subsection 1 of section 1; or

(b) to apportion the rent or rateable value of the property in which any dwelling house to which the Act applies is comprised, pursuant to subsection 3 of section 2,

may be made to the court in the district of which the dwelling house is situate.

2.—(1) An application to the county court under the Act for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest to which the Act applies, pursuant to the second proviso to subsection 4 of section 1, may be made—

(a) to the court in the district of which the mortgaged property is situate; or

(b) to the court in the district of which the mortgagor resides or carries on business; or

(c) if the mortgagee resides or carries on business in the district of any court mentioned in section 84 of the County Courts Act, 1888, and the mortgagor resides or carries on business in the district of any other court mentioned in the said section, either to the court in the district of which the mortgagee resides or carries on business, or to the court in the district of which the mortgagor resides or carries on business.

3.—(1) Subject to the provisions of this Rule, the Courts (Emergency Powers) Rules, 1914, and the County Courts (Emergency Powers) Rules, 1914, as to applications to the High Court or to the county court for leave to foreclose or realize any security to which the Courts (Emergency Powers) Act, 1914, applies, shall cease to apply to mortgages of leasehold interests to which the Increase of Rent and Mortgage Interest (War (Restrictions) Act, 1915, applies: and this Rule shall apply in lieu thereof.

[The Rules referred to are now replaced respectively by the Courts (Emergency Powers) Rules, 1918, and the Consolidated County Courts (Emergency Powers) Rules, 1918. By Rule 3 (2) (b) of the former applications to foreclose or realise in respect of mortgages of leasehold interests to which the Increase of Rent, &c. Act, 1915, applies are to be made to the County Court.]

(2) An application under the last preceding Rule for an order authorizing a mortgagee to call in and enforce a mortgage of a leasehold interest shall if and so far as an application for leave to foreclose or realize the security is required under the Courts (Emergency Powers) Act, 1914, be deemed to be also an application for leave to foreclose or realize the security under that Act, and no separate application under that Act shall be necessary.

(3) If during the progress of the proceedings on any such application it shall be made to appear to the court that the mortgage is one to which the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, does not apply, but that leave to realize or enforce the security is required under the

Courts (Emergency Powers) Act, 1914, and that the amount of the principal sum secured by the mortgage does not exceed five hundred pounds, the application may proceed in the county court as an application for leave to foreclose or realize the security under the last mentioned Act and the County Courts (Emergency Powers) Rules, 1914, and those rules shall apply accordingly; but if the amount of the principal sum secured by the mortgage exceeds five hundred pounds the application shall not proceed under the last mentioned Act, unless the respondent consents to the county court having jurisdiction in the matter, in which case the court shall have jurisdiction to deal with the application as an application for leave to foreclose or realize the security under the last mentioned Act and Rules, and those Rules shall apply accordingly.

[The Rules referred to are now the Consolidated County Courts (Emergency Powers) Rules, 1918.]

(4) If it shall be made to appear to the court that the mortgage is one to which neither of the above mentioned Acts applies, the application shall be struck out.

4. An application under these Rules shall be made by means of a summons according to such one of the forms in the Appendix as shall be applicable to the case, entitled "In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915."

Preparation, Filing, &c. of Summonses.

5. The summons shall be prepared by the applicant and filed with the registrar, with as many copies as there are parties to be served: Provided that any summons, with the necessary copies, may, if the registrar so thinks fit, be prepared in his office: and the registrar shall examine, complete, seal, and sign the summons and copies, and return the copies to the applicant for service.

Service and Substituted Service.

6.—(1) The summons shall be served on every person affected thereby four clear days at least before the day fixed for the hearing of the summons, unless the judge or registrar gives leave for shorter service.

(2) Service shall be effected in accordance with the provisions of Order LIV., Rules 2 and 3, of the County Court Rules as to service of notice of an interlocutory application.

(3) The practice of the courts as to substituted service of summonses and notices shall apply to summonses under these Rules.

Applications to Registrar.

7. Any application under these Rules may be made to the registrar, subject to the following provisions:—

(a) The registrar may in any case, and shall on the application of either party, made on the hearing of the application, and before the registrar has given his decision, refer the matter to the judge:

(b) The judge may vary or rescind any determination or order made by the registrar, and may make such determination or order as may be just:

(c) An application for variation or rescission shall be made on notice in writing in accordance with the County Court Rules as to interlocutory applications; and the notice shall be filed within four clear days from the date of the determination or order of the registrar, and if it is not so filed no such application shall be allowed to be made without leave of the judge.

Evidence in Support of Application.

8. No affidavit in support of the application shall be used, except by leave of the court, but the court shall hear oral evidence tendered by either party.

Power to hear Cases in Private.

9. The court may at any stage of the proceedings on an application under the Act order that the case shall thenceforward be heard in private.

Transfer of Proceedings.

10. If during the progress of the proceedings on any application it shall be made to appear to the judge that the same could be more conveniently heard in some other court, it shall be competent to the judge to transfer the same to such other court; and in any such case the provisions of section 85 of the County Courts Act, 1888, and of Order VIII., Rule 9, of the County Court Rules shall apply.

Determination of Questions submitted.

11. On the hearing of the application, or at any adjournment thereof, the court, on proof of the service of the summons, if the respondent does not appear, shall—

(a) determine the question as to the increase of rent of the dwelling house; or

(b) apportion the rent or rateable value of the property in which the dwelling house is comprised; or

(c) make or refuse an order authorising the mortgagee to call in or enforce the mortgage; or

(d) make such other determination or order in the matter as the court shall think fit.

Power to impose Conditions.

12. On an application for an order authorising a mortgagee to call in and enforce a mortgage, the court may, after considering all the circumstances of the case and the position of all the parties, make or refuse to make the order subject to such conditions as the court may think fit.

Certificates or Orders on Applications.

13. When the court has given its decision on any application, a certificate of the determination of the court, or, in the case of an application for an order authorising a mortgagee to call in and enforce a mortgage, an order in accordance with the decision of the court, shall be prepared and sealed and signed by the registrar, and duplicates thereof shall be delivered to the bailiff, who shall within twenty-four hours send the same, by post or otherwise, to the parties; but it shall not be necessary for the party in whose favour a certificate or order is made to prove, previously to taking proceedings thereon, that it was posted or reached the opposite party.

Revocation or Variation of Orders.

14. Any determination or order made under the Act and these Rules may, should subsequent circumstances render it just so to do, be suspended, discharged, or otherwise varied by the court in which the determination or order was made, on application made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

General Provisions as to Procedure on Applications.

15. Subject to the provisions of the Act and these Rules, the practice and procedure of the court in an action, and in particular the practice and procedure with respect to the summoning of witnesses, and on an application for the apportionment of rent or rateable value, or for an order authorising a mortgagee to call in and enforce a mortgage, with respect to discovery and inspection of documents, shall, with the necessary modifications, apply to proceedings on an application under the Act.

16.—(1) The following fees shall be payable under Schedule B, Part I., of the Treasury Order regulating Fees in the County Courts, on applications under the Act and these Rules, in lieu of all other fees on such proceedings, viz.:—

	s.	*d.*
On an application for the determination of a question as to the increase of rent of a dwelling house—		
6*d.* in the £ or part of a £, calculated on 4 weeks' standard rent of the dwelling house, but not exceeding	2	6
On an application for the apportionment of rent or rateable value	10	0
On an application for an order authorising a mortgagee to call in and enforce a mortgage	20	0

The foregoing fees shall include drawing, sealing, and issuing the certificate or order, and the fee prescribed by paragraph 12 of Part I. of Schedule B of the Fees Order shall not be taken.

(2) On summonses to witnesses, the fees prescribed by Schedule A of the Fees Order shall be taken.

(3) On applications for discovery or inspection of documents, and on applications for variation of certificates or orders, the fees prescribed by paragraphs 10 and 12 of Part I. of Schedule B of the Fees Order shall be taken.

(4) The court may remit or excuse in whole or in part any fee paid or payable under this Rule.

Costs.

17.—(1) The costs of any application under the Act and these Rules shall be in the absolute discretion of the court.

(2) The court may either fix the amount of such costs, or allow them on the scale applicable to an interlocutory application in an action for an amount equal to—

(a) in the case of a question as to the increase of rent, the amount on which fees are payable under Rule 16; or

(b) in the case of an application to apportion rent or rateable value, one-half of the annual rent or rateable value apportioned to the dwelling house; or

(c) in the case of an application for an order authorising a mortgagee to call in and enforce the mortgage, the amount of the principal sum secured: Provided that Column B of the Scale shall apply in all cases above twenty pounds, to the exclusion of Column C.

(3) Where the amount does not exceed ten pounds, there may be allowed for all work done by a solicitor in relation to the application—

	s.	*d.*
If the amount exceeds £2 but does not exceed £5...	6	8
If the amount exceeds £5 but does not exceed £10...	10	0

(4) The court may direct that any costs allowed shall be payable by the opposite party, or, in the case of an application for an order authorising a mortgagee to call in and enforce a mortgage, that they shall be included in the security; and any order directing payment of costs shall be included in the certificate or order, and shall be enforceable in the same manner as an order for payment of costs made in an action.

Forms.

18.—(1) The forms in the Appendix hereto, with such modifications as may be necessary, shall be used for summonses, certificates and orders under the Act and these Rules.

(2) The registrar of any court may apply to the Treasury for any of the said forms to be printed and supplied to him, and if the application is granted may obtain such forms and supply the same without charge for the use of parties requiring the same.

Proceedings for the Recovery of Rent or Mortgage Interest, or for the Recovery of Possession of Tenements or Ejectment of Tenants.

19. Where proceedings are taken in the county court for the recovery of rent of any dwelling house to which the Act applies, or of interest on a mortgage to which the Act applies, or for the recovery of possession of any dwelling house to which the Act applies, or for the ejectment of a tenant from any such dwelling house, the court shall, before making an order for the recovery of such rent or interest, or for recovery of possession or ejectment, satisfy itself that such order may properly be made, regard being had to the provisions of section 1 of the Act

20. An application to the court for the rescission or variation, pursuant to sub-section 3 of section 1 of the Act, of an order for recovery of possession or ejectment made but not executed before the passing of the Act, may be made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

The 29th day of January, 1916.

Buckmaster, C.

We, the undersigned, two of the Commissioners of His Majesty's Treasury, do hereby, with the consent of the Lord Chancellor, order that the several fees specified in Rule 16 of the foregoing Rules shall be taken on the proceedings therein mentioned, in lieu of all other fees for the proceedings therein set forth.

Geo. H. Roberts.
Geoffrey Howard.

I concur in the above order as to fees.

Buckmaster, C.

The 4th day of February, 1916.

APPENDIX.

1.

Summons for Determination of Question as to Increase of Rent.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of , of , for the determination, pursuant to the above-mentioned Act, of a question which has arisen as to the increase of rent of a certain dwelling house [*or* of part, that is to say (*here specify the part*) , of a certain dwelling house], to which the said Act applies, situate at , and known as , of which the applicant is the tenant and you the respondent are the landlord [*or* of which you the respondent are the tenant and the applicant is the landlord], on the transfer to the tenant of certain burdens and liabilities previously borne by the landlord [*or* in respect of the transfer to the landlord of certain burdens and liabilities previously borne by the tenant], and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

2.

Summons for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

No. of Application .

Between

A.B.
(*address and description*) . Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of of , for an order that, notwithstanding the provisions of the above-mentioned Act, the said may be at liberty to call in and enforce a certain mortgage to which the said Act applies, dated the day of , granted by you the respondent to the applicant [*or* to and assigned by him to the applicant] on certain leasehold property situate at , and known as , on the ground that the security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

3.

Summons for Apportionment of Rent or Rateable Value of Property.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of , of , for the apportionment of the rent on the 3rd day of August, 1914 [*or (if the property was last let before or first let after the 3rd August, 1914, insert the date at which it was so let;* see *Act, Section* 2 (1) (*a*)] [*or* the rateable value on the 3rd day of August, 1914 [*or (if the property was first assessed after that date, insert the date at which it was first assessed)*]] of certain property situate at , and known as , and comprising a certain dwelling house [*or* part, that is to say (*here specify the part*) of a certain dwelling house] situate at , and known as , for the purpose of determining the standard rent [*or* the rateable value] of the said dwelling house [*or* of the above-mentioned part of the said dwelling house] for the purposes of the above-mentioned Act, and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

4.

Certificate on Application for Determination of Question as to Increase of Rent.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of , and upon hearing ,

This Court doth pursuant to the above-mentioned Act determine—

(a) that as the result of the transfer to the applicant, A.B., [*or* the respondent, C.D.,] the tenant of a certain dwelling house [*or* of part, that is to say, (*here specify the part*) of a certain dwelling house] to which the said Act applies, situate at , and known as , of the following burdens and liabilities formerly borne by the respondent, C.D., [*or* by the applicant, A.B.,] the landlord, that is to say (*here specify the burdens and liabilities transferred*) , the terms on which the said premises are held are on the whole less favourable to the tenant than the previous terms, and that the rent of the said premises has thereby been increased for the purposes of the said Act by the sum of a week [*or* are on the whole not less favourable to the tenant than the previous terms, and that the rent of the said premises has not been increased for the purposes of the said Act]:

[*or* (b) that as the result of the transfer to the applicant, A.B., [*or* the respondent, C.D.,] the landlord of a certain dwelling house [*or* of part, that is to say (*here specify the part*) of a certain dwelling house] to which the said Act applies, situate at , and known as , of the following burdens and liabilities previously borne by the respondent, C.D., [*or* the applicant, A.B.,], the tenant, that is to say (*here specify*

the burdens and liabilities transferred) , and the increase of rent in respect of such transfer, the terms on which the said premises are held are on the whole more favourable to the tenant than the previous terms, and that the increase of rent in respect of such transfer is to be deemed not to be an increase of rent for the purposes of the said Act [*or* are on the whole less favourable to the tenant than the previous terms, and that the increased rent in respect of such transfer is to be deemed to be an increase of rent for the purposes of the said Act to the extent of a week]]

[*or as the case may be*].

[*Add, if so ordered,*

And it is ordered that the respondent, C.D., [or the applicant, A.B.,] do, on or before the day of , 19 , pay to the applicant, A.B., [or to the respondent, C.D.,] his costs of this application, which are hereby allowed at the sum of £].

Dated this day of , 19 .

By the Court,
Registrar.

To (*the applicant and respondent, naming them*).

5.

Order on Application for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) . Respondent.

On the application of , and upon hearing ,

This Court being satisfied that the security of the applicant on

certain leasehold property situate at , and known as , under a certain mortgage to which the above-mentioned Act applies, dated the day of , granted by the respondent to the applicant [*or* to , and assigned by him to the applicant], is seriously diminishing in value, or is otherwise in jeopardy, and that it is reasonable that the said mortgage should be called in and enforced, doth pursuant to the above-mentioned Act order that notwithstanding the provisions of the said Act the applicant, A.B., be at liberty and he is hereby authorised to call in and enforce the said mortgage.

[*If any conditions imposed, add* subject to the following conditions, that is to say:—

].

[*Or*, It is ordered that the application of the applicant, A.B., for an order authorising him to call in and enforce a certain mortgage to which the above-mentioned Act applies, on certain leasehold property situate at and known as , dated the day of , 19 , granted by the respondent, C.D., to the applicant, A.B. [*or* to , and assigned by him to the applicant, A.B.,] be and the same is hereby dismissed.

[*Add, if so ordered,*

And it is ordered that the applicant, A.B., be allowed as against the respondent, C.D., his costs of this application, which are hereby allowed at the sum of £ .

And it is ordered that the said sum of £ be added to the security created by the said mortgage [*or* that the respondent, C.D., do pay the said sum of £ to the applicant, A.B., on or before the day of , 19].

[*Or*, And it is ordered that the applicant, A.B., do, on or before the day of , 19 , pay to the respondent, C.D., his costs of this application, which are hereby allowed at the sum of £ .]

Dated this day of , 19 .

By the Court,

Registrar.

To
(*the applicant and respondent, naming them*).

6.

Certificate on Application for Apportionment of Rent or Rateable Value.

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of , and upon hearing ,

This Court, for the purpose of determining the standard rent [*or* rateable value] of a certain dwelling house [*or* of part, that is to say (*here specify the part*) of a certain dwelling house] to which the above-mentioned Act applies, situate at , and known as , and comprised in a certain property known as , doth pursuant to the above-mentioned Act declare that the rent at which the said property was let on the 3rd day of August, 1914 [*or if the property was last let before that date or first let after that date*, on the day of , 19 (*the date on which it was so let*)], shall be apportioned between the said dwelling house [*or* the said part of the said dwelling house] and the rest of the said property as follows, viz.:—

£ to the said dwelling house [*or* the said part of the said dwelling house]; and

£ to the remainder of the said property.

[*or* doth pursuant to the above-mentioned Act declare that the rateable value of the said property on the 3rd day of August, 1914 [*or if the property was first assessed after that date* on the day of , 19 (*the date on which it was first assessed*)], shall be apportioned between the said dwelling house [*or* the said part of the said dwelling house] and the rest of the said property as follows, viz.:—

£ to the said dwelling house [*or* the said part of the said dwelling house]; and

£ to the remainder of the said property.

[*Add, if so ordered,*

And it is ordered that the respondent, C.D., [*or* the applicant, A.B.,] do, on or before the day of

, 19 , pay to the applicant, A.B., [*or* to the respondent, C.D.,] his costs of this application, which are hereby allowed at the sum of .]

Dated this day of , 19 .

By the Court,
Registrar.

To
(*the applicant and respondent, naming them*).

7.

Notice of Application for Suspension, Discharge, or Variation of Determination or Order.

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

In the County Court of , holden at .

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

TAKE NOTICE, that the applicant, A.B., [*or* the respondent, C.D.,] intends to apply to the Judge of this Court on , the day of , 19 , at the hour of in the noon, to suspend [discharge *or* vary] the determination [*or* order] made in this matter on the day of , 19 , whereby it was determined [*or* ordered *or* declared] that (*here recite determination or order*)

and for an order providing for the costs of this application.

AND FURTHER TAKE NOTICE, that the grounds of my intended application are that the following circumstances have arisen since the date of the said determination [*or* order] which render it just

that the said determination [*or* order] should be suspended [discharged *or* varied], viz.:—

(*here set out circumstances*)

Dated this day of , 19 .

(Signed)
Applicant [*or* Respondent],
[*or* Applicant's [*or* Respondent's] Solicitor].

To (*the respondent or applicant, naming him*),
and to Messrs.
his solicitors,
and to the Registrar of the Court.

8.

Order on Application for Suspension, Discharge, or Variation of Determination or Order.

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

In the County Court of , holden at .
No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of for the suspension [discharge *or* variation] of the determination [*or* order] made in this matter on the day of , 19 , whereby it was determined [*or* ordered *or* declared] that

(*here recite determination or order*)

and upon hearing ,

It is ordered that the said determination [*or* order] be and the same is hereby suspended [*or* discharged *or* varied] as follows:—

(*here set out terms of order for suspension, discharge, or variation*)

[*Or*, It is ordered that the application of the said be and the same is hereby dismissed.]

[*Add order as to costs, if any:* see Form 6.]

Dated this day of , 19 .

By the Court,
Registrar.

To
(*the applicant*
and the respondent,
naming them).

THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) RULES, 1919, DATED 21 MAY, 1919, MADE BY THE LORD CHANCELLOR UNDER THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1919.

County Courts, England.

1. The Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916 (herein referred to as the principal Rules), shall with the necessary modifications apply to proceedings in the County Courts or the City of London Court with respect to houses or parts of houses or mortgages to which the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (in these Rules referred to as the principal Act), and the enactments amending that Act are extended by the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919 (in these Rules referred to as the Act of 1919).

(2) In any such proceedings references in the said Rules to "the Act" shall be construed as referring to the principal Act and the enactments amending and extending the same; and the words "and the enactments amending and extending the same" shall be added in the forms in the Appendix to the said Rules after the words "In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915."

2.—(1) An application to the County Court under section 6 of the Act of 1919 may be made to the Court in the district of which the dwelling-house in relation to which the application is made is situate.

(2) Such application shall be made by means of a summons according to the form in the Appendix.

(3) Particulars shall be appended or annexed to the summons according to the form in the Appendix.

(4) The provisions of the principal Rules as to an application to determine any question as to the increase of rent of a dwelling-house shall apply to applications under this Rule, with the omission of the word "standard" in paragraph (1) of Rule 16.

(5) An order on an application under this Rule shall be according to the form in the Appendix.

3. These Rules may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1919, and shall be read and construed with the principal Rules, and shall come into operation on the 26th day of May, 1919.

The 21st day of May, 1919.

(Signed) BIRKENHEAD, C.

APPENDIX.

9.

Summons on Application under Section 6 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and the enactments amending and extending the same.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , 19 , at the hour of in the noon, on the hearing of an application on the part of , of , the particulars of which are hereunto annexed.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned, such proceedings will be taken and order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

PARTICULARS.

[*To be appended or annexed to summons and, if on separate paper, with heading as in summons.*]

1. On or about the day of , 19 , the respondent, the occupier of a certain dwelling-house [*or* of part, that is to say (*here specify the part*) of a certain dwelling-house] situate at and known as and being a dwelling-house to which the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and the enactments amending and extending the same apply, let the said dwelling-house [*or* a part of the said

dwelling-house, that is to say (*here specify the part*)] to the applicant at a rent of a week [*or* a month, *or as the case may be*] , which rent includes payment in respect of furniture.

2. The applicant alleges that the rent charged for the premises so let to him yields to the respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914.

3. The applicant therefore applies to the Court under sect. 6 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919—

(a) for a declaration that it is proved to the satisfaction of the Court that the rent charged on the letting of the said premises by the respondent to the applicant yields to the respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, and for an assessment by the Court of the amount of such last-mentioned profit; and

(b) for an order that the said rent, so far as it exceeds such sum as would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable; and

(c) for an order that the amount of any payment of rent in excess of such sum made by the applicant in respect of any period after the passing of the said Act shall be repaid to the applicant, and may, without prejudice to any other mode of recovery, be recovered by the applicant by means of deductions from any subsequent payment of rent; and

(d) for an order providing for the costs of this application.

Dated this day of , 19 .

Applicant.

[*or* Applicant's Solicitor].

10.

Order on Application under Section 6 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and the enactments amending and extending the same.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of for an order under section 6 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, and upon hearing .

The Court doth declare that it is proved to its satisfaction that the rent charged on the letting by the respondent, the occupier, to the applicant of a certain dwelling-house [*or* a part, that is to say (*here specify the part*) of a certain dwelling-house] situate at and known as and being a dwelling-house to which the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and the enactments amending and extending the same apply, at a rent of a week [*or* a month, *or as the case may be*], which rent includes payment in respect of the use of furniture, yields to the respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, which last-mentioned profit is hereby assessed by the Court at the sum of a week [*or* a month, *or as the case may be*].

And it is ordered that the said rent to the extent of a week [*or as the case may be*] being the amount by which the said rent exceeds the sum of per week [*or as the case may be*] , which would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable.

And it is further ordered that the sum of , being the amount of the payments of rent in excess of the said sum of per week (*or as the case may be*) made by the applicant in respect of the period of the said letting after the passing of the Increase of Rent and Mortgage Interest (Restric-

tions) Act, 1919, shall be repaid to the applicant, and may, without prejudice to any other method of recovery, be recovered by the applicant by means of deductions from any subsequent payments of rent.

[*Add, if so ordered*—

And it is ordered that the respondent do pay the said sum of to the applicant on the day of [*or* by instalments of for every days, the first payment to be made on the day of].]

[*Add also, if so ordered*—

And it is ordered that the respondent do on or before the day of pay to the applicant his costs of this application, which are hereby allowed at the sum of .]

[*Or, if application fails*—

On the application of for an order under section 6 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, and upon hearing .

It is ordered that the said application be and the same is hereby dismissed.

[*Add directions, if any, as to costs*].]

Dated this day of , 19 .

By the Court,

Registrar.

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